

ORIGINAL

WORLDCOM

ORIGINAL

Keith L. Seat
Senior Counsel
Federal Law and Public Policy

1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2993
Fax 202 887 3175

January 3, 2001

RECEIVED

JAN - 3 2001

Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

EX PARTE OR LATE FILED
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: EX PARTE -- CC Docket No. 00-217; Joint Application of SBC
Communications, Inc. Pursuant to Section 271 of the Telecommunications
Act of 1996 to Provide InterLATA Services in Kansas and Oklahoma

Dear Ms. Salas:

On January 2, 2001, Jerry Epstein, Lori Wright, and I on behalf of WorldCom, Inc. met with Jordan Goldstein, legal advisor to Commissioner Ness, to discuss SBC's joint application to provide long distance service in Kansas and Oklahoma. Specifically, we discussed issues relating to pricing, OSS, line splitting for DSL, and Track A, as set forth in the attached document which was provided at the meeting.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this Notice are being filed with your office.

Sincerely,



Keith L. Seat

Attachment

cc (w/o Att.): Jordan Goldstein

cc (w/Att.): Gary Remondino, Layla Seirafi, DOJ, Eva Power, KCC, Joyce Davidson, OCC

No. of Copies rec'd 0 + 1
List ABCDE



Southwestern Bell's Section 271 Application for Kansas and Oklahoma Should Be Denied

January 2, 2001

SWBT's 271 Application for Kansas and Oklahoma Should Be Denied

- No residential competition in Oklahoma or Kansas based on Unbundled Network Elements (UNEs) due to Southwestern Bell's (SWBT's) policies and operational problems
 - Excessive, above-cost prices
 - Unproven and problematic Operations Support Systems (OSS)
 - Discriminatory line splitting policies and unproven ability to provide line splitting
- Result is no meaningful residential competition in either state
 - SWBT cannot even satisfy "Track A" in Kansas because facilities-based residential competition is de minimis

UNE-P Is Key to Widespread Local Residential Competition

- UNE-Platform necessary for ubiquitous residential competition
 - Cable, other facilities have limited reach, limited build-out
 - Non-UNE-P expansion slow, capital requirements high
- Where UNE-P pricing is minimally acceptable and other significant barriers are being lifted, WorldCom will enter and seek to overcome ongoing OSS challenges:
 - New York entered 12/98
 - Texas entered 4/00
 - Pennsylvania entered 8/00
 - Michigan and Illinois currently being launched (despite serious OSS issues)

SWBT Has Not Shown Its OSS Is Ready in Kansas or Oklahoma

- FCC has consistently held that best evidence of OSS readiness is actual commercial experience
 - SWBT has no track record with UNE-P OSS in Kansas or Oklahoma
- FCC has made clear that second best evidence is rigorous, independent third party test of OSS that is open to CLEC input and blind to tested party
 - Even second best evidence absent in Kansas and Oklahoma
 - Texas experience may lessen scope of, but not need for testing
- FCC has never granted 271 application without either commercial experience or adequate third party testing
 - Time and again BOC claims of adequate OSS have proven untrue when tested by commercial experience or third party

SWBT's Texas OSS Does Not Support Claim of Readiness in Kansas or Oklahoma

- SWBT's Texas OSS experience is instructive, but does not show readiness in Kansas or Oklahoma
 - SWBT's OSS is not identical across Texas, Oklahoma, Kansas
 - Product and regulatory differences on SWBT's side require programming changes and testing on CLEC side
 - Different back-end systems from state to state
 - Additional differences unknown because of lack of rigorous test
 - SWBT'S OSS in Texas continues to have problems, largely due to SWBT's excessive manual handling of orders
 - Jeopardies – SWBT returns too many, for wrong reasons, and too late
 - SOC's – When volumes increase, SWBT fails to return vital completion notices or does so far too slowly, only after considerable effort by CLEC
 - Rejects – SWBT rejects CLEC orders for invalid reasons and delays too long in returning manually processed rejects to CLEC
 - Loss of Dial Tone – Some CLEC customers lose dial tone due to SWBT's flawed and unnecessary practice of splitting each order into three sub-orders which SWBT fails to coordinate

SWBT's UNE Rates Are Inflated, Not Cost-Based, and Violate Competitive Checklist

- SWBT did not even put evidence in its 271 application that its UNE rates in Kansas and Oklahoma are cost-based
 - SWBT'S application simply notes that states set prices, and concludes that they are reasonable
 - No attempt made to show that rates are TELRIC-compliant based on cost studies adjudicated by state commissions
- SWBT did not even mention in its application the so-called "promotional discounts" in Oklahoma on which it now fully relies
 - Not cost-based
 - Not adequate for local competition

FCC Should Reject Application for Lack of Evidence on Checklist Requirements

- FCC again faced with applicant's new factual claims at end of process
 - All of SWBT's new pricing arguments in its reply filing and post-reply ex parte filings were available when it filed application
 - 271 applications become a mockery of agency process unless FCC enforces its clearly articulated "complete when filed" rule
- SWBT cannot concoct compliant pricing now, when state commissions did not establish cost-based rates
 - No cost studies in Oklahoma support rates, let alone promotional rates
 - DOJ properly rejected "split the baby" rates because there is no evidence that SWBT's high rate proposal was cost-based
 - AT&T (which participated in cost case) documents many TELRIC errors

SWBT's Inflated Rates Prevent UNE-P Entry in Oklahoma and Kansas

- Oklahoma UNE rates prevent entry, for CLECs would lose money every month on every customer in every zone (even apart from initial systems costs)
 - DOJ agrees that Oklahoma's UNE rates are not cost-based
 - No basis for recurring rates that grossly exceed Kansas rates
 - Oklahoma rates are 35 to 200% higher than Kansas rates
- Oklahoma promotional rates do not solve problem
 - Even if SWBT had relied on these rates in its application, they are excessive and are not based on TELRIC
 - At most they reduce some rates by 25%, but only 0 to 10% in most important, urban zone
 - Again, no cost studies support the rates, as DOJ found
 - CLECs cannot rationally enter based on rates that will vanish

SWBT's Inflated Rates Prevent UNE-P Entry in Oklahoma and Kansas (cont'd)

- Kansas non-recurring charges ("NRCs"), coupled with telemarketing restrictions, prevent UNE-P entry
 - Kansas NRCs substantially exceed those in Texas
 - Kansas commission concedes there is no cost data supporting NRC rates
- WorldCom is not alone in concluding that SWBT's rates prevent competition -- among all competitors, there are only 14 residential UNE-P customers in Oklahoma, and none in Kansas

SWBT Not Providing Reasonable and Nondiscrim. Access to UNEs for Line Splitting

- FCC should hold SWBT to its new line splitting promises in its reply, including --
 - Commitment to provide cross-connects when two CLECs engage in line splitting
 - Disavowal of K2A terms and conditions on line splitting
 - No requirement for voice CLEC to collocate
- Despite these important first steps, SWBT has not come close to showing it provides line splitting on concrete terms that are reasonable and nondiscriminatory
 - Prices, processes and other terms for line splitting still not established
 - No proof SWBT can process orders for UNE-P line splitting between two CLECs

SWBT Not Providing Reas. and Nondiscrim. Access to UNEs for Line Splitting (cont'd)

- SWBT must establish sufficient processes, prices and other terms for line splitting, including --
 - How SWBT will handle migration of voice circuit where line sharing arrangement between SWBT and data carrier is already in place, and what fees (if any) will apply
 - Demonstrate that SWBT can actually process line splitting orders, including UNE switching terminated to the collocation cage of data provider
 - Provide commercial experience and/or third party testing sufficient to show checklist compliance
- SWBT's newly proposed changes to the K2A are fraught with ambiguity
 - Proposed changes should first be discussed and determined at state level, not in ex parte letters to FCC

SWBT Does Not Qualify for “Track A” Consideration in Kansas

- Facilities-based residential competition in Kansas is de minimis, and therefore fails to meet Track A
 - At most 184 CLEC customers
 - No CLEC is providing an “actual commercial alternative” for facilities-based residential service in Kansas
- For failure to meet this threshold requirement, SWBT’s application must be rejected